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O.P. 71

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Department of Revenue

OFFICE of the Board

STATION Melbs

Ms No. 1772.

A 1252

Dated 27/6/38

DESPATCHED
26 JUN 1938
with Ltr 6

Pages in the file

(SUBJECT.)

Rents (Bellary) Bellary Dist
Mun. of Ofs 559/38 Roads
Town Encroachments &c
Land Revenue

C.F. 22.

In reply, please quote number, date and short title.*

14.3.38

Revenue DEPARTMENT:

A1253

Received ..... *Registered* .....

From (Name) E.C .Wood Esq., I.C.S.,

(Designation) Collector

Post Box ....., (STATION) Bellary

Telegraphic Address .....

BOARD OF REVENUE 12 MAR 1938 MADRAS

To

The Secretary to the Board of Revenue,

Madras.

Ref. *No.*5839/37 A-1, *dated* 10th March 1938.

Sir,

ENCLOSURES

File of 2 Enclosures

SPARE COPIES

Suits - District Munsif's Court,Bellary - O.S.No. 559/36 - Plaintiff Municipal Council,Bellary - Defendants (1) Mr. M. Devendra Naidu and (2) Collector of Bellary - sanction of defence.

The Municipal Council, Bellary represented by the Commissioner of Bellary Municipality has filed a suit in the District Munsif's Court,Bellary, for the recovery of the open site before the house of Mr. M. Devendra Naidu, bearing D. No. 80 in Goldsmith Street, Bellary, which was enclosed by a compound wall. The plaintiff claims that it is Government site vested in the Municipality, being excess road margin. The Government were subsequently impleaded by the court as the 2nd defendant, as the Municipality has no title to land without the Government.

1 3-4 cf

Sketch at (N)

2. I enclose copies of the plaint, the report of the Tahsildar, Bellary, the opinion of the Government Pleader, Bellary, and the draft written statement prepared by him. The Government Pleader is of opinion that the plaintiff should be supported by Government as the suit site is an unauthorised encroachment by the 1st defendant on Government land. I request that the Board may be pleased to sanction the defence and approve the draft written statement.

1 3-4 cf

1 15-16 cf

1 17-19 cf

1 5 cf.

1 17-19 cf

1 5 cf.

1 9-12 cf

3. Copies of plaint in O.S. No. 863/1897 B.M.C. with plan, written statement by the defendant in O.S. 863/1897,

decree

decree in O S 44/99 with plan (H.C.C.) and a private copy of sale deed executed by Mr. D. Venkobachar dated 18-11-1919 are enclosed, as they are referred to by the Government Pleader.

4. The suit stands posted to 14-3-1938, but I am asking the Government Pleader to move the court for granting a fortnight's adjournment for filing the written statement.

For Collector.

P.S. 10/3.

In the Court of the District Munsiff of Bellary.

O.S. of 1936.

Between

The Municipal Council, Bellary Plaintiff
by its Commissioner.

Vs.

M. Devendrulu Naidu Defendant.

Plaint under Section 26; O.7 R. I.P.C.

The plaintiff above named states as follows:-

1. The plaintiff:-

The Municipal Council Bellary by its Commissioner, is the Plaintiff.

Address of the Plaintiff:- C/O M.R.Ry. K. KesavaRao, B.A., B.L., Pleader, Bellary.

2. The Defendant:-

1. M. Devendrulu Naidu, aged 45 nearly, father's name not known, Pleader, Bellary is the defendant.

2. The Secretary of State for India in Council represented by the District Collector, Bellary.

3. The defendant is the owner of two houses in Kalamma Temple street, bearing Municipal door numbers 79 and 80 of the 2nd Ward of the Bellary Municipality. The portion ABCD marked in red in the suit plan herewith filed, in front of the house Door No. 80, was part of the road margin in front of the said house. There is no drain in front of the block of houses of which the house bearing door No. 80 forms a part. It is Government property vested in the Municipality under section 61 of the District Municipalities Act.

4. On 3-5-34 the defendant put in an application to the plaintiff to permit him to enclose the site in the form of a trapezium in front of his house. The said application is filed herewith and in it the defendant has himself prayed for permission to enclose a site measuring A.B. 8 ft and along CD 12 feet. The license was refused on 27-11-34. The

4

defendant started construction and continued to do so in spite of plaintiff's notice to him to stop construction and contrary to his plan has now enclosed a rectangular site marked ABCD which including the walls now measures ~~10 1 4~~ 10'×4" by 10 ft 4 in.

5. The defendant has no manner of right tiltle or interest in the space ABCD thus encroached upon. A notice was issued to the defendant by the plaintiff on 11-9-34 to pull down the walls and remove the encroachment but to no effect.

6. The cause of action for this suit accrued to the plaintiff as against the defendant at Bellary within the jurisdiction of this court in May 1934 and later on.

7. Valuation of this suit for purposes of Court fee and jurisdiction is Rs 65 being the value of the site and half the value of the walls. Court fee is paid thereon.

8. This plaintiff therefore prays for a decree against the defendant:- i. directing him to deliver possession to plaintiff of the space marked ABCD in the plan herewith produced, removing the walls and the encfoachment thus made by the defendant within a time to be fixed by the court or ii. in case the defendant fails so to remove within the period fixed, to allow the plaintiff to get the same removed through court and recover the expense thereof from the plaintiff and iii. For costs of this suit and iv. for such other relief as the court may deem fit to grant under the circumstances of the case.

xx xx

Commissioner.

I, the Commissioner, the Municipal Council Bellary, plaintiff in the above suit, declare that what is stated in the above paragraphs is true to my knowledge. Signed and verified at Bellary this day of 1936.

xx xx

Commissioner.

(True Copy)

11-5-36.

For Collector.

A.S.N./10-3p.

5 —

In the Court of the District Munsif, B e l l a r y.

O.S. No. 559/36.

Municipal Council, Bellary -- Plaintiff.

Vs.

1. M. Devendra Naidu
2. Province of Madras represented by the Collector of Bellary. } Defendants.

written statement of 2nd defendant.

--

The defendant above-named submits as follows:--

1. This defendant adopts the plaintiff's case in toto.

M3-4
CJ

Defendant.

Verification.-

I, the Collector, Bellary, do hereby declare at Bellary this day of March 1938 that what is stated above in para 1, is true to my information which I believe to be true.

Defendant.

(True Copy)

20 11/3.

(III) Translation of the Sale deed registered as document No. 3146/19 dated 18th November 1919.

--

Sale deed of immovable property for Rs.3000/- (Three thousand only).

Sold by	Sold to
Dhadesugur Venkobacharlu, s/o. D.Pedda Ramacharulu.	Karur Hanumanthacharlu, s/o. K. Narasingacharlu.

The property, namely house, was purchased by me from P. Vasudeva Mudaliar and registered in Book 1 - Volume 237, pages 174-175 as document No. 3121 dated 17-11-1919. I have today received cash and handed over possession of the house to you. You and your heirs may enjoy the property with full rights. If there is any litigation regarding this house at any future date I shall establish your rights for the house at my expense.

Schedule.

Registration District -- Bellary.

Sub District - Bellary, boundaries for house bearing Mp. No. 855 situated in the northern row of Kalamma street, with the main door towards south and the open space in front- Ward I of Bellary Municipality.

East - Lane attached to Kasturi chetty's house.

West - My house bearing Mpl.No. 856.

North- Lane.

South- Small house bearing Mpl.854 and road.

Also latrine attached to this house situated in the Northern portion opening towards west.

And also the draw well situated between this house and my house No. 856. Both of us have the right of using the well. I have no objection for your building an upper story on the house sold to you.

Boundaries for the small house bearing No. 854.

East - Lane attached to Kasturi Chetty' house.

West - Open space in front of the main door of the house No. 855 sold to you.

North - Main door of house No. 855 and wall.

South - Kalamma car street. (Terraced house witnin these limits facing south.)

True Translation
Mangalam 6/3/38
Sheristadar
5/3/38

C.A. 503 N.M.S.

In the court of the District Munsif of Bellary.

Original Suit No. 863 of 1897.

Parniputtur Vasudeva Mudaliar minor by his next friend and father M.R.Ry. Rao Bahadur Parniputtur Subbaraya Mudaliar, Vellala Tansildar of Adoni now residing at Adoni... Plaintiff.
M.R.Ry. V. Custuri Chetty son of V. Rama Chetty, Komati Pensioned Tahsildar residing at Bellary ... Defendant.

The Plaintiff above named begs to submit under Section 50 of the Code of Civil Procedure as follows:-

1. That the Plaintiff purchased house No. 877 shown in the plan herewith annexed from its previous owners "The London Mission Society" as per document registered and dated.

2. House No. 876 shown in the plan belongs to the Defendant.

3. The plot A B C D marked in the plan belongs to the Plaintiff and has been in the enjoyment of the Plaintiff's vendor and his tenants from time immemorial.

4. The defendant taking advantage of the change of ownership and absence of plaintiff from Bellary has trespassed upon and raised a building on, the plot in question which is in front of the Plaintiff's house.

5. The Plaintiff opened a window in his own wall adjoining the small passage between Plaintiff's and defendant's houses which the defendant illegally blocked up and the said passage is also Plaintiff's as far his titled deed which passage also defendant is using and asserting as his.

6. If it should be proved that the plot does not belong to the Plaintiff the plot A B C D would form part of the street and as such the Plaintiff has a right of way over it and is entitled to prevent the Defendant from causing obstruction to the passage.

7. The defendant though several times demanded to remove the obstruction has persistently failed to do so.

8. Hence the cause of action has arisen for this suit on the of 1897 the date of erection of the building in question.

9. The Plaintiff therefore prays this Honourable court to deliver judgment for the removal of the obstruction and for an injunction to the defendant to leave the plaintiff's window open at it originally was, and for a declaration that the passage between plaintiff's and defendant's houses is Plaintiffs together with the court costs and further interest thereon. Description of the plot in question and its valuation Twenty five only Rs. 5-0-0 costs of pulling.

8th March 1937. (Ad) R. Subbaraya Mudaliar.

(Sd) O. Guru Bhima Rao, Pleader.

I, P. Subbaraya Mudaliar next friend and father of the minor plaintiff, P. Vasudeva Mudaliar, do hereby, declare that what is stated above is true to the best of my knowledge and belief.

(Sd) P. Subbaraya Mudaliar.

Description of the plot is: east by defendant's house South by public road west and north by plaintiff's house and its adjacent front space. The plot is marked ABCD and the valuation is Rs. 25-0-0 only. (Sd) O. Guru Bheema Rao.

Plaintiff's vakil.

District Munsif's court Bellary, Received 15th November 1897.

(True copy) (Sd) C. Govinda Rao, for Superintendent.

Sealed--District Munsif's Court of Bellary. Received 27th July 1937.

(Initialled) K.R. Head Clerk.

(true copy)

English Translation of (11) 11

IN THE COURT OF THE DISTRICT MUNSIF, HOSPET.

O.S. 863/1897.

Vasudeva Modaliar, s/o.
P. Subbaraya Modaliar -- Plaintiff.

V. Kasturichetti, Retired Tahsildar,
Bellary. Defendant.

Written statement under section 110 C.P.C. on behalf of Defendant.

1) As the plan enclosed to the plaint is not correct, a correct plan of the site is enclosed.

2) D.No. 877 in the said plan was purchased by plaintiff's father Subbaraya Modaliar in a private sale held by the London Mission. This plaintiff did not purchase it. As the Madras Bank obtained a decree on the property of Mr. P. Subbaraya Modaliar and attached it, the sale deed was executed in favour of the defendant. This suit, which has not impleaded the proper party, is against law.

3) The pial marked A.B.C.D. in the plan attached to the plaint, which is alleged to have been purchased by the plaintiff from the London Mission society does not belong to D.No. 877.

4) At the time of sale, there was a dispute whether the suit pial forms part of the house No. 877 or not, the dispute was settled between Mr. Lucas and Mr. J.P. Cotilingam on behalf of the London Mission Society and the plaintiff's father with the help of gentlemen then present that the house only was to be sold and not the suit pial. It is therefore false to say that the pial belongs to the house.

4) A.B.C.D. the pial in dispute has been under the possession and enjoyment of the defendant's father and himself for over 50 years. There was a gate on the pial to the west of the defendant's house, and a servant of the defendant was living there. Recently it was closed and the defendant's samans were being stored on it.

5) When D.No. 877 was in the possession of the London Mission Society, the main gate of the house was on the west as shown in the defendant's plan. The plaintiff has recently

put it

put it on the south and reconstructed the house. The pial A.B.C.D. is now in front of the house.

6) The wall A.B. in the defendant's plan is a joint wall, the open site E.F.G.D. has been under the possession and enjoyment of the defendant. Defendant's 9th window, and No. 7 water spout are in the open site.

7) In the Joint wall - E.B. - towards the open site E.F.G.D as the plaintiff opened a window without the defendant's permission, it was closed by the defendant. From time immemorial the defendant has been storing lumber under lock and key in site E.F.G.D. which opens south. For this site, either the plaintiff or the London ission Society has any right or responsibility. In D.No. 877 Christians were living before the house was purchased by the plaintiff. The defendant's father did not like that a Hindu House should adjoin a Christian house. So the open site EFGB between the two places ~~E.F.G.I~~. was created. The site in the North of E.F.G.B, forms part of the house of the defendant. With the permission of the defendant only, the plaintiff had put his beams and rafters on the wall (B I) while reconstructing his house.

8) The suit site A.B.C.D. does not belong to the Municipality as a public road. It has been in possession and enjoyment of the defendant and the room on it was built with the permission of the Municipal Chairman.

The Court may be pleased to appreciate these points and dismiss the suit of the plaintiff with costs.

Sd. V. Casturi chetty.

/True Translation/

BRangaswamy 6/3/28

Huzur Sarishtadar.

H/5/3/28

C.A. 503 N.M.S.

In the court of the District Munsif of Hospet.

Present:- M.R.Ry. V.V S. Avadhani Garu B.A.,

District Munsif.

Original Suit No. 44 of 1899.

Parniputtur Vasudeva Mudaliar minor by his next friend and father M.R.Ry.Rai Bahadur P. Subba Raya Mudaliar,Tahsildar of Adoni, Bellary district. ... Plaintiff.

Vs.

V. Kasturi Chetty Garu, son of Rama Chetti Komati Pensioned Tahsildar, residing at Bellary. ... Defendant.

Suit for the removal of obstruction and for an injunction to the defendant to leave the plaintiff's windows open as it originally stood, and for a declaration that the passage between the Plaintiff's and Defendant's houses belongs to Plaintiff together with court costs and further interest.

This cause coming on this day for final disposal in the presence of Mr. Asundi Bheema Rao, Vakil on the part of the Plaintiff and of Mr. R. Krishna Charlu, Vakil on the part of the Defendant and both parties have presented a Rajinama dated 30th March 1900 before the commissioner in the following terms:- that the Defendant should be the rightful owner of the disputed lane running north to south and marked DEFG in the Defendant's plan; that the Plaintiff and the defendant should have a joint right in the entire wall lying to the west of the said lane between the houses of the parties and running north to south and marked as I H J BD in the plan; that the window opened by the plaintiff in the said wall and now ~~xhuxx~~ shut up by the Defendant should be opened and enjoyed by the Plaintiff without any obstruction of the Defendant, but in case the Defendant raises the height of the house the Plaintiff should close the said window; that the two eves droppings through which rain water falls in and on the roof of the Plaintiff's house should be removed by the Defendant and he should make separate arrangements for the flow of the rain water ~~xxx~~ that may fall on his house; that the eves droppings

through

through which rain water of the plaintiff's house falls in the lane marked DEFG should also be removed and separate arrangements should be made for the flow of it; that the defendant transferred his right of the disputed room and its site marked ABCD in the plan produced by the Defendant to Plaintiff for Rs. 80/- received from him, and that, therefore the plaintiff has become the absolute rightful owner of the room with its site; but the wall marked BD lying to the east of the said room should be joined to the wall marked I HEJBD and the parties should have a joint right to it; and that both parties should bear their own costs.

D e c r e e.

Agreeably to the terms of the said Rajinama, this court doth order and decree that the Plaintiff do open and enjoy the window in the wall marked IHEJBD (to which both parties have a joint right) in the plan produced by Defendant. But the Plaintiff do shut up the said window whenever the defendant builds the house raising its height; that the rest of the plaintiff's claim be dismissed and this court doth order and decree that each party do bear his own costs.

Given under my hand and the seal of the court this 31st day of March 1900. (Sd) V.V.S. Avadhani.

District Munsif.

Note:- The parties should apply as so n as possible for the return of all the exhibits which they may wish to preserve as the record will be liable to be destroyed after three years or after six months from the date of the disposal of the (illegible) exhibit was filed according to the nature of the exhibit under the rules for the destruction of records. (Sd) V.K. Sastri.

For Superintendent.

Sealed:- District Munsif's Court of Bellary. Received 27th July 1937. (Sd) K.R. Head Clerk.

(true copy)

Copy of letter Ref.C. No. 3443/37 B-3 dated 31st January 1938 from the Tahsildar, Bellary, to the Collector, Bellary.

Suits - O S No. 559/36 on the file of District Munsiff, Bellary - Plaintiff - Municipal Council, Bellary by its Commissioner - Defendant (1) M. Devendrulu Naidu (2) Collector of Bellary.

The points raised in the plaint are discussed below.

Para 3. The site referred to is a road margin include in S.No. 499(1) registered in the accounts as village site poramboke. The Kalamma-street passes in this S.No. 499(1). The street has not been separately surveyed. The actual limits of the road margins are not therefore identifiable on ground. Open spaces forming road margins are being occupied with or without the permission of the Municipal authorities and it will therefore be difficult to adduce positive proof of the ownership of the open space. In these circumstances, the Municipality should not have initiated a suit against the defendant.

Para 4. This is entirely a matter that is dealt with by the Municipality. No records are available in Revenue Department.

Para 5. The defendant claims a right of title of the site but he relies upom some old documents which have been filed in court. Copies of these documents will be necessary to examine the defendant's right.

The Public Prosecutor may be asked to apply copies of the following documents on which the defendant claims his title for the site.

(1) Certified copy of the plaint in O S. No. 863/1897 on the file of Bellary Munsiff's Court with plan. 8-3-37.

(2) Certified copy of decree in O S 44/99. 31-3.1900.

(3) Certified copy of a written statement in O S 863/97 with plan. 17-6-1898.

(4) Certified copy of sale deed executed by D.Venkobachar in favour of K. Ananthachar for Rs. 3,000/- dated 18-11-1919.

(5) Certified copy of sale deed by K. Hanumanthachar

in

in favour of R. Venkatalakshmikantha Rao for Rs. 3,600/- 11-12-1929. These documents were filed in court by the defendant on 27-7-1937.

Para 6. The suit was filed by the Municipality in the first instance and Government has been included as the ~~first~~ 2nd defendants ~~plaintiff~~ later on.

Para 7 and 8. No remarks.

A sketch of the suit site with topo details and measurements is enclosed.

An extract of the adangal and diglott registers prepared at the time of re-settlement is enclosed. The old diglott register available in the Taluk office has been filed in the District Munsif's court in connection with another civil suit.

So far as Revenue Accounts are concerned, the name of Devendra Naidu is not found in the diglott register among ground-rent cases. There are no other documents except that the site forms a part of village site S.No. 499(1).

The case was booked for the first time as an encroachment in fasli 1346 as B.M. No. 7 and it was forwarded to the Municipal Commissioner for disposal on 7-3-37.

I regret that owing to pressing items of work in connection with Famine I could not attend to this business which requires personal attention. The resettlement records had to be examined before this reply could do drafted and the records filed by the defendant in the court had to be verified and this I was not able to do until now. I beg to be excused for the delay.

17

Copy of letter G.P.No. 66 dated 2-3-1938 from the Public Prosecutor and Government Pleader to the Collector, Bellary.

--

O.S. 559/36 B.M.C. Municipal Council
Vs.
1. Mr. Devendra Naidu.
2. The Collector of Bellary.

--

I have read the report of the Tahsildar, Bellary Ref. C.3443/37.B-3, dated 31-1-38; and the following documents copies of which were obtained as per your instructions. The same are enclosed for perusal and return.

1. Certified copy of plaint in O.S. 863/1897 B.M.C. with plan.
2. " decree in O.S. 44/99 B.M.C.
3. " written statement in O.S. 863/97 with plan
4. Private copy of sale-deed by Mr. D. Venkobachar in favour of K. Ananthachar for Rs.3000/- dated 18-11-1919.

N.B.- Copy of the document of K. Hanumantha Char in favour of R.Venkata Lakshmi Kantha Roa 1929 (is not obtained out I have read the same in Court)

2. The Tahsildar has against para 6 of the report stated "The Government has been included as 1st plaintiff": I think it is a clerical error. The Govt. represented by the Collector has only been added as 2nd defendant, the main responsibility for the conduct of the suit being on the municipality, the Collector having been added as the Municipality's title is only by virtue of a derivative title.

3. The question for the Govt. to decide in the circumstances is, whether it ought to support the municipality or the 1st defendant Mr. Devendra Naidu (who is a pleader practising in the District)

4. The Tahsildar against para 3 of the report states in the ~~1st~~ last sentence "In these circumstances the municipality should not have initiated a suit against the defendant". I understand it is Mr. Balagurunatham the present Tahsildar as Commissioner Municipal Council who first started action in regard to the eenroachment in question and ordered the same to be pulled down. I had a talk with the present Tahsildar subsequent to his report and also the vakil for the municipal Council Mr. K. Kesavarao and have gone through the material papers. In

In my opinion the Municipality should be supported by the Government in its action. There is nothing to show that the Defendant is the owner of the portion encroached. My view is all land is Government land except such as has been expressly transferred to private owners. The transfer by the London Mission to the predecessors in title of the 1st defendant does not show that the particular portion in dispute was transferred.

5. In O.S. 863/1897, on the file of the Munsif Court Bellary, the dispute was between the predecessors in title of the present defendant and their neighbour Kasturi Chetty a Tahsildar who built a room on a portion adjoining the present encroachment and in front of defendant's house. The plaintiff therein contended that the plot belonged to him or in the alternative to the Municipality. The plans produced by the parties are instructive. The pleadings also show that the house now occupied by 1st defendant faced to the West originally, and as such prima facie the portion now in dispute could not have been owned by 1st defendant's predecessors in title. The Municipality was not made a party to the said suit and the suit was transferred to Hospet Munsif's court where it was numbered O.S. 44/99 and the same was disposed of by a compromise between the parties by which the defendant therein transferred his right to the room which was built, to plaintiff therein for Rs.80/-.

6. In that suit the plaintiff's (present 1st defendant) right to the portion adjacent to the present encroachment and in front of his present house was not made out, but he purchased it in consideration of Rs.80/-. The Municipality not being a party is in no way prejudiced by the said arrangement.

7. The documents of 1919 and 1929 which are recent ones with recitals that the house (of 1st defendant) is transferred with the open space attached does not enlarge the rights of the parties.

8. Till 1934 when the 1st defendant applied for permission to enclose the open site in dispute it was part of

of the road and there was no specific act by the owner which give notice to the Municipality of the intention to claim the suit site adversely to the Municipality.

9. In my view therefore the Municipality has to be supported. As there is no prima facie case for the defendant, the matter is one which it is proper to place before a competent court for adjudication whatever the ultimate result. For my part I believe the municipality has a better case. In view of the fact there is a frequent tendency to encroach on road margins with impunity, the suit has to be proceeded with just to teach the defendant and the public to learn to respect law and authority and not to go on with constructions even when the Municipality has not granted the license or refuses license as in this case.

10. If you agree all that we have to plead is "The Government supports the plaintiff's case after going through all the documents and I have enclosed draft written statement, for your signature. Meanwhile permission to defend the suit may be obtained if necessary from the Board to avoid delay.

N.B.- The above suit is adjourned to 14-3-38 for written statement.

Sd. N. Mrityunjaya Sastri,
2-3-38.
Government Pleader.

/True Copy/

11/3

21

C.F. 22.

In reply, please quote number, date and short title.*

Revenue DEPARTMENT.

A 1536

*Received*_____ *Registered*_____ 1253/38

From (Name) E.C.Wood Esq., I.C.S.,

(Designation) Collector,

Post Box_____, (Station) Bellary.

*Telegraphic Address*_____

BOARD OF REVENUE MADRAS 24 MAR 1938

To

The Secretary to the Board of Revenue, Madras.

Ref.No. 5839-37A1, *dated* 22-338. 19

Sir,

Enclosures_____

Spare Copies_____

Suits-(Bellary) O.S.No. 559/36-District Munsif's Court, Bellary- Plaintiff Municipal Council, Bellary- Defendants 1.Mr.M. Devendra Naidu and 2. Collector of Bellary.

I invite your attention to this office Ref.C.5839/37 A-1 dated 10-3-38. The District Munsiff Bellary has granted time till 26-3-38 only for filing the written statement in the above suit. I request that the Board be pleased to sanction the defence and send the written statement before that date.

For Collector.

A.S.N./2333a.

M1 JTH

.16.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..	25/3	BH
When copied ..	25/3	[illegible]
When examined ..	25/3	KMW MC by MSH.
When signed ..	~~25/3~~	
When despatched.	25 MAR 1938	

DESPATCHED

SUBJECT :— Leitch — (Bellary) — Bellary Dt Munsiff — Obno 559/36 — Bellary Town — Encroachment — Defence Sanction

READ AGAIN ____, dated ____ 19____.

" " ____ " ____ 19____.

READ *ALSO* :—

4.40 PM

A No. 253/38 from the Coll of Bellary, No. 5839/37 dated 10/3/1938. M 1-2 of

A " 536/38 " do " do " 22/1/1938 21 of 2

" ____ " ____ " ____ " ____ 19____.

Order / Resolution — Ms. / Rout. No. Ref A 253/38-1 dated 25/3/38 19____.

Is Rec at once

Telegram to Col 14

25/3/38

Your 5839

[dated] 22nd.

Telegram

DESPATCHED

25 MAR 1938

MC

To the Coll of Bellary

W 26/3/38

The following telegram will be sent to the Coll of Bellary :—

[Leitch] — [Bellary] — Bellary Dt Munsiff Obno 559/36 [Bellary Town — Encroachment] ~~Defence Adjournment to be applied for~~ — Press [for a] line 25/3 family long adjournment.

HG 25338 Instructions follow.

AR 25/3/38

W 25.3.38

25 M, J 7H

C.F. 16.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying	11/4	
When copied		
When examined	4.4.	
When signed		
When despatched.		

SUBJECT:— Suits – (Bellary) – Bellary Dr Municipality – Cases 559/36 – Bellary Town – Encroachment – offence – further report

READ AGAIN ____ dated ____ 19____.

" " ____ " ____ 19____.

READ *ALSO*:—

A No. 253/38 From the Coll of Bellary, No. 583/37 dated 10/3/38 19 Pt 1-2 cf 2

A " 1536/38 " —do— " —do— " 22/3/38 P 21 cf 2

Board's Telegram dated 25/3/38 " P 23 cf " 2 19____.

Order / Resolution Ms. / Rout. No. Ref A 1253/38-2 dated 2/4/38 19____.

11.15 AM

15 Sow in 4 4 JG

- tg - P 3 nf -

recd

§ 182 - [illegible]

Bks

The Coll is requested to report why the Municipality has filed a Suit for the removal of the encroachment instead of taking action under the Dr Municipalities Act. 2/ The Board observes that this Course puts the Govt as a pro-forma defendant even if the Govt are added the burden of proof will lie on them and the Coll is requested to state what evidence there is to enable the Govt to discharge this burden successfully

P.T.O

The Board also observes that the marking of the suit site in the plaint sketch submitted by the Coll is ~~seem to be~~ incorrect. The suit site is said to be opposite to Door no 80 and so must be the portion marked in red in the sketch. But ~~it is stated in the~~ makes mention of - para 3 of the plaint ~~that~~ the portion ~~marked~~ A B C D marked in red in the suit plan in front of house door no 80, so ~~as to~~ ~~part of the road lying in front of the said house~~". It is seen from the sketch, that the portion marked red in front of house door no 80 is altogether different ~~plot altogether~~ from the plot marked A B C D which lies opposite to door no. 79.

The Coll is requested to instruct the Municipality to correct the sketch suitably ~~properly~~ ~~before filing it in the court~~

To the Coll of Bellary with the suit plan returned

Ug 31/3

14/4/2436

14

27

O. 32.

Revenue DEPARTMENT.

A 34 of 1253/38

In reply, please quote number, date and short title.*

Received _____ *Registered* _____

From (Name) J.W. Pritchard Esq. I.C.S.,

(Designation) Collector,

Post Box _____, (Station) Bellary.

Telegraphic Address _____

BOARD OF REVENUE 11 JUN 1938 MADRAS

Coll's further report received on 17/6/38. vide ¶ 31 cf

To

The Secretary to the Board of Revenue,
Madras.

Rc.A1 *No.* 5839/37, *dated* 9-6-1938 19

Sir,

Enclosures _____

Suits - Bellary District Munsif Court - O.S.No. 559/36 - Bellary Town - Encroachment by Mr. Devendra-rao Naidu - Defence - Further report - submitted.

--

Ref.- Board's Ref.A.No. 1253/38/2, dated 2-4-1938.

Spare Copies ¶ 25-26 cf

¶ 25 cf

¶ 29 cf

Para 1 of the Board's Reference.-

I submit herewith a copy of letter No. E.R. 75/37, dated 26-5-38 received from the Commissioner, Bellary Municipality showing the action taken by the Municipality to get the encroachment removed under the District Municipalities Act and the circumstances which led to the filing of the present suit.

Police aid to get the encroachment removed was refused in this office D.Dis.1154/15-8-1935 as the provision of section 355 of the District Municipalities Act was not complied with.

(Not sent) ¶ 1153 Vol III Madras Code Rule 16 ¶ 25 cf.

Para 2 of the Board's Reference.-

The encroachment is in S.No. 499(1) of Bellary which is registered as village site poramboke and the Government have absolute title to the land. The site being in a public street, it is vested in the Municipality under section 61(1) of the District Municipalities Act. The encroachment is being booked under Act III of 1905.

¶ 1036. Vol III Madras Code Rule 16

e

28

The Government Pleader, Bellary was consulted in the matter and a copy of his letter No. 127 dated 21-4-38 is enclosed for information. 30 cf

Para 3 of the Board's Reference.- 26 cf

The correct sketch received from the Commissioner is submitted. It is marked in red ink and it is in front of new Door No. 81 which corresponds with old No. 79. 1 (N)

10.6.38
For Collector.

JRM/10-6.

P.S. 10.6.38

Copy of letter E.R. 75/37 dated 26th May 1938 from the Commissioner Bellary to the Collector, Bellary.

--

Ref.- Your Roc. 5839/37 A-1, dated 12-4-1938.

--

Paea (1) - Building application was filed by the defendant on 3-5-34. The documents of title were called for and personal inspection had to be delayed often, the request of Mr. Devendra Naid defendant. The license was refused on 27-11-34. In the meantime the defendant constructed the compound wall and in spite of notices by Municipality to stop construction. On 11-9-34 notice was issued asking him to pull down the compound wall thus constructed w without license. The Sanitary Inspector who was authorised to pull down, reported obstruction and wanted police aid on 13-12-34. The District Superintendent of Police was accordingly addressed. The District Collector who appears to have been approached called for, all the records and finally ordered on 15-8-35 that no police aid should be given. As by this time over one year had elapsed, Since date of encroachment the defendant could not be prosecuted. Mr. Balagurunatham Pillai was the Commissioner from the time the building application was received till the matter was finally with the Collector.

On receipt of the Collector's (Mr. Bhaskararao Naidu) reply the matter was referred to a Municipal Councillor to investigate and report to whom the site belongs. The defendant refused to show any documents and so suit had to be filed.

Mr. Balagurunatham Pillai the Commissioner who held, it was an encroachment was posted as Tahsildar, Bellary and even after he became Tahsildar he treated it as an encroachment and a 'B' Memo was issued by him.

Para (3) - A correct sketch of the portion encroached is herewith submitted.

/True Copy/

P.T.O.

Copy of Government Pleader's letter G.P. 127, dated 21--4--38 to the Collector of Bellary.

--

Board's Ref.A. 1253/38-2, dated 2-4-38.

--

Though the initial burden may be on the Municipality (or Government) as Plaintiff in the suit, the said burden is very light in view of section 2 of the Madras Land-Encroachment Acts III of 1905 and the said burden is easily shifted to the defendant by 2 plans viz(1) Health plan of 1907 and (2) The survey plan of 1924, both ante-litem motam, wherein the portion in dispute is shown as portion of Road Margin.

Then as regards Defendant's case I have discussed all the documentary evidence on his behalf fully in my previous report. Taking the evidence on both sides fully into consideration, I think the Municipality has a better case. The enclosures sent to me are herewith returned.

/True Copy/

JRM/10-6.

C.F. 32.

Revenue DEPARTMENT.

A 3618

In reply, please quote number, date and short title.*

*Received*_____ *Registered*_____ 1253/38

From (Name) J.W. Pritchard Esq., I.C.S.,

(Designation) Collector,

Post Box_____, (Station) Bellary.

*Telegraphic Address*_____

To

The Secretary to the Board of Revenue,
Madras.

Ref.A1 *No.* 5839/37, *dated* 14-6-1938 19 .

Sir,

Suits - Bellary District Munsif Court - O.S.No. 559/36 - Bellary Town - Encroachment by Mr. Devendas Naidu - Defence - Sanction - requested.

--

Ref.- Board's Ref.A2. 1253/38-2, dated 2-4-38, and this office Ref.C. 5839/37 A-1, dated 9-6-1938.

--

Enclosures_____

Spare Copies M 25-26 cf M 27-28 cf

The Government Pleader, Bellary has reported that the above suit which had been posted to 4-6-1938, has been adjourned to 6-7-1938 finally for filing the written statement. I request that the Board may be pleased to accord sanction for the defence of the suit and return the draft written statement after approval before the end of June 38

5 cf

do

17.6.38

For Collector.

Copy to the Government Pleader, Bellary for information.

JRM/15-6.

35

Geo John Hall

C.F. 16.

DRAFT FOR APPROVAL.

	Date.	Initials.
When received for fair copying ..	28/6	BLL 1020
When copied ..	28/6	MB
When examined ..	28.6.	28.6.
When signed ..		
When despatched.		

SUBJECT :—

Suits — (Bellary) —
Bellary Dh Munsiff —
Orig 559/36 - Bellary
Town - Encroachment
defence - Sanctioned

READ AGAIN ——————, dated ——————19——.

" " ——————" ——————19——.

READ *ALSO* :—

No. 1253/38 From the Collr Bellary No. 5839/37 dated 10/3/1938 1-2 cf Q

" 3401/38 " - do - " " " 9/6/38 27-28 cf Q

" 3548/38 " " do " " " 16/6/38 30 cf Q

~~Order~~ Resolution ~~Route~~ Ms. No. 1772/38 dated 27/6/38 19——.

The Board sanctions the defence of the suit and approves the draft written statement submitted by the Collr

27/6

27/6/38

To the Collr of Bellary
(with 2 sketches retd)
(N)

Adjournment applied for
Note file

Suit - (Bellary) — Bellary or Munsiff - Otno 559/36 - Bellary Town - Encroachment - defence Sanction

M1
J.S(A).
AS(CB).

A 1253/38 from the file of Bellary 5034/37 d 10/3/38 pp 1-2 cf

To AS

Please see the Collr's letter at pp 1-2 cf

sketch at p 1 (N)

c/. The first defendant encroached upon the suit site marked ~~A B C D~~ red in the sketch at p 1 (N), and enclosed it by walls. In 1934, he applied to the Municipality for a license to enclose the site with walls but it was refused. As the first defendant enclosed the site with walls, the Municipality has filed a suit against him for removing the walls and delivering possession of the site to it and has impleaded Govt as the second defendant. The suit site forms part of the road margin

p 3 cf para 4

pp 3-4 cf

in front of the house door no 80 and ~~the ownership~~ vests in the Municipality ~~through the Courts~~. The local Lyb is of the opinion that the Govt should support the Municipality's case, as the first defendant made an unauthorised encroachment on Govt land. The Colln requests that the defence of the suit may be sanctioned and the draft written statement may be approved. The draft written statement simply states that the second defendant (Govt) adopts the plaintiff's case in toto. The defence of the suit may be sanctioned and the draft written statements may be approved

~~W~~ 3 Colln seems to be ~~wrong~~ incorrect. The ~~suit site~~ is said to be opposite to door no 80, and so must be the portion marked in red. But in the plaint, it is wrongly

marking of the suit site in the sketch submitted by the

1 cf

1 cf para 9.

1 cf

5 cf

5 cf

1 (N)

3 cf

stated as "the portion ABCD
marked in red in the suit plan
It is seen from the sketch at
p1 (N), that the portion marked
red and the portion marked
ABCD are different plots, and
are not one and the same.
Further the portion marked red
lies in front of house door no 80,
while the portion marked
ABCD lies in front of door
no. 79. As the Coll states
that the suit site is opposite
to house door no 80, the portion
marked red in the sketch
appears to be the suit site, and not the
portion marked ABCD, which
lies in front of house door no
79. The discrepancy may be
pointed to the Coll, and he
may be asked to instruct the
Municipality to revise the
sketch properly before filing it
in the Court

p3 cf para 3

p1 (N)

p1 cf

p1 (N)

The discrepancy had better be cleared up before anything else is done

22/3

J.S.M.

But why a civil suit in which portion under the Dist. Munic. Act to remove the encroachment? 25/4 2338. 24.3.38

Ask the Coll. This course puts the burden of proof on us. What is the
[illegible] to discharge it?

4 Hq 16.3.38

From the Cttee 5837/37.12-p/38 pt.

To As(CA) PC. see Collis Cttee at p. 21 of.

Draft telegram for approval

2/. Draft reference on the lines p3ng of M/s orders will be submitted after the telegram is despatched.

4/ 25/3 HQ 25/3/38

AS 25338 JS(A) 25-3-38

To Secy

Secy

Please see Members orders at p3 ng

2/ Indexes have been searched for precedents of the present type, that is, where the Municipality has filed a suit against the encroacher instead of taking action under the Dt Municipalities Act to remove the encroachment. No such precedents are traceable!

Draft submd

Cttee 31/3 HQ 2/4/38

Draft appd. Is no reference to be made to Govt?

2/4

Hearing 6-7-38 — 5

Colr. wants order before 1-7-38

Issued as Board's reference A 1283/38-2 dated 2/6/38 pp 25-26c; from the Coll of Bellary 5539/2. dt 9/6/38 pp 27-28c

S/ To Secy

Please see the previous notes and orders at pp 1-3 of the Board's reference at pp 25-26c and the Colr's reply at pp 27-28c

2/ With reference to para 1 of the Board's reference at p 25c, the Colr has submitted a copy of the Municipal Commissioner's letter explaining the action taken by the Municipality under the Dt Municipalities Act to get the encroachment removed and the circumstances under which the Municipality had to file the present suit. The Municipal Commissioner states (not part) that by the time that the Colr's order refusing police aid for the removal of the encroachment was passed on 15/8/35, over one year had elapsed since the date of the encroachment and the encroacher could not be prosecuted; and that the encroacher refused to show his

p 25c
p 27c
p 29c
p 29c

documents of title to the Municipal Councillor, who was asked to investigate ~~the~~ and report to whom the disputed site belongs; and hence the Municipality had to file the present suit. p29 cf

3/ With reference to para 2 of the Board's reference at p25 cf, the Colh states that the disputed site forms part of the villagesite Poramboke fno 499/1, that the Govt have absolute title to it, that it vests in the Municipality under section 61(1) of the Municipalities Act and that it is being booked as an encroachment under Act III of 1905. The local Gh states in this connection that though the initial burden may be on the Municipality or the Govt, this burden is very light in view section 2 of Act III of 1905 ~~and~~ that the burden is easily shifted to the defendant (encroacher) by 2 plans (1) Health plan (90) and (2) survey plan of 1924, wherein the dispute site is shown as a portion of the road margin and that as between the Municipality and p27 cf p30 cf p36 and Ex VII(1) MK16

7

the defendant (encroacher)
the Municipality has a
better case.

4/ With reference to
para 3 of the Board's reference
the Municipality has agreed
the sketch

The defence of the
suit may be sanctioned
and the draft written statement
may be approved

24/6
KG
25-6-38.

A

To Secy 1A

Secy. has agreed draft submitted in Pet (Mis)
that simple drafts
in such cases

27/6
KG
27-6-38

CIRCULATION CHECK SLIP.

B.P. No. Ms 1772

Dated 27/6/38

Single Member

~~Two Members~~

~~Full Board~~

	1.A.	A.D.S- & L.R.,	A.S. L.R.,	A.S. Sett.	A.S. Sep. Rev.,	J.S.	Secy.	M.3.	M.2.	M.1
(1) Open file seen by			✓		✓		✓			✓
(2) Final draft seen by		✓								
(3) Now circulated to										
(4) Initials.										

IC 27/6

Passed for record.

**~~Secretary~~
Joint Secretary

A.S. (L.R.,)

A.S. (Sett.,)

A.S. (Sep. Rev.,)

A.D.S & L.R.,

I.A. 29/6 A 7/30

W 30/6

** Note - Entries not required to be scored out.

MSR/NA